

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SUNERGY CALIFORNIA LLC,

Debtor/Appellant,

v.

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS,

Appellee.

No. 2:21-cv-01429-JAM

Bankruptcy Court Case No.
21-20172-C-11

**ORDER DENYING SUNERGY'S EX PARTE
MOTION FOR A STAY OF THE CHAPTER
11 TRUSTEE APPOINTMENT PENDING
APPEAL**

Sunergy California LLC ("Sunergy"), a solar manufacturer, is the debtor in the Chapter 11 bankruptcy action, Case No. 21-20172-C-11, and appellant in the action before this Court. See Not. of Appeal, ECF No. 1. Sunergy moves ex parte to stay the appointment of a Chapter 11 trustee pending the adjudication of its appeal. See Mot., ECF No. 4. The Official Committee of Unsecured Creditors ("Creditors' Committee" or "Committee") opposes Sunergy's motion, see Committee Opp'n, ECF No. 11, as does the Chapter 11 trustee, Jeffrey Perea ("Perea"), see Perea Opp'n, ECF No. 14. Sunergy replied. See Reply, ECF No. 16. After consideration of the parties' briefing and relevant legal authority¹, the Court DENIES Sunergy's motion.

I. BACKGROUND

Sunergy is a solar photovoltaic module manufacturer company

¹ As noted in the minute order at ECF No. 7, this motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

1 in the business of producing and selling solar panels. Mot. at
2 4. On January 20, 2021, Sunergy California LLC filed a petition
3 for Chapter 11 bankruptcy protection with the United States
4 Bankruptcy Court for the Eastern District of California
5 ("Bankruptcy Court"). Id.

6 On July 8, 2021, the Committee filed a motion seeking to
7 appoint a Chapter 11 trustee, which Sunergy opposed. Id. at 5.
8 On July 28, 2021, the Bankruptcy Court granted the Committee's
9 motion. Id.; see also Order Appointing Trustee, Ex. 2 to
10 Gonzalez Decl., ECF No. 5. The United States Trustee appointed
11 Jeffrey Perea. Committee Opp'n at 5. Sunergy then filed a
12 notice of appeal. See Not. of Appeal.

13 On August 12, 2021, Sunergy filed an ex parte motion in the
14 bankruptcy proceeding, asking the Bankruptcy Court to stay the
15 appointment of the trustee pending appeal. Mot. at 5. That
16 motion was denied on August 15, 2021. Id.; see also Order
17 Denying Stay, Ex. 3 to Gonzalez Decl. In that order, the
18 Bankruptcy Court explained: "This court ordered the appointment
19 of a chapter 11 trustee pursuant to 11 U.S.C. sec. [1104(a)(2)]
20 as being in the interest of creditors, any equity security
21 holders, and other interests of the estate . . . whether sec.
22 [1104(a)(1)] permitting a trustee to be appointed for cause
23 including fraud, dishonesty, incompetence, or gross mismanagement
24 also warranted a chapter 11 trustee is a red herring . . . [as]
25 this court's ruling was premised on sec. [1104(a)(2)]." Order
26 Denying Stay at 2. Further, the Bankruptcy Court stated: "this
27 case has been plagued by too-little-too-late syndrome and an
28 established pattern of disappointing performance over the long

1 period of time that it has been pending. No realistic
2 opportunity for a successful business organization appeared to
3 the court to be on the horizon. No creditor seriously opposed
4 the appointment of a trustee." Id.

5 On August 20, 2021, Sunergy filed the present motion seeking
6 a discretionary stay of the appointment of the trustee.

7 II. OPINION

8 A. Request for Judicial Notice

9 The Committee requests the Court take judicial notice of
10 exhibits A through O, all of which are filings on the docket of
11 the Eastern District bankruptcy case: In re Sunergy California,
12 LLC, Bank. E.D. Cal. Case No. 21-cv-20172. See Committee's Req.
13 for Jud. Notice ("RFJN"), ECF No. 12.

14 All of these exhibits are matters of public record and
15 therefore proper subjects of judicial notice. See Lee v. City
16 of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001). Accordingly,
17 the Court GRANTS the Committee's request for judicial notice.
18 However, the Court takes judicial notice only of the existence
19 of these documents and declines to take judicial notice of their
20 substance, including any disputed or irrelevant facts within
21 them. Lee, 250 F.3d at 690.

22 B. Legal Standard

23 As Sunergy concedes, see Mot. at 6, a stay pending an appeal
24 is not a matter of right, but instead an exercise of judicial
25 discretion dependent upon the circumstances of the particular
26 case. Lair v. Bullock, 697 F.3d 1200, 1203 (9th Cir. 2012)
27 (citing Nken v. Holder, 556 U.S. 418, 433(2009)). To show that a
28 stay pending appeal is justified, Sunergy must (1) "make a strong

1 showing that [it] is likely to succeed on the merits," (2) show
2 that it "will be irreparably harmed absent a stay,"
3 (3) demonstrate that issuance of a stay will not "substantially
4 injure the other parties interested in the proceeding," and
5 (4) show that the "public interest lies" in favor of a stay.
6 Hilton v. Braunskill, 481 U.S. 770, 776 (1987). The first two
7 factors— strong showing of likelihood of success on the merits
8 and irreparable injury—are "the most critical." Nken, 556 U.S.
9 at 434. However, if the party seeking the stay fails to
10 demonstrate any of the above factors, it "dooms the motion." In
11 re Irwin, 338 B.R. 839, 843 (E.D. Cal. 2006).

12 Additionally, this Court reviews the bankruptcy court's
13 decision under an abuse of discretion standard. See In re
14 Lowenschuss, 171 F.3d 673, 685 (9th Cir. 1999) ("we will reverse
15 the bankruptcy court's decision to grant [the] motion to appoint
16 a Chapter 11 Trustee only if the bankruptcy court abused its
17 discretion.").

18 C. Analysis

19 Both the Committee and Perea contend Sunergy has not carried
20 its burden on any of the four factors and particularly on the
21 critical first and second factors. Committee Opp'n at 6-9; Perea
22 Opp'n at 5-10. Sunergy insists it has. Mot. at 7-15; see also
23 Reply.

24 As to the first factor, Sunergy must make a "strong showing"
25 that success on the merits of the appeal is likely. Lair, 697
26 F.3d at 1203. The Court agrees with the Committee that Sunergy's
27 motion "falls well short of the 'strong showing' the Ninth
28 Circuit requires on this element." Committee Opp'n at 3.

1 Sunergy dedicates much of its motion to arguing the
2 Bankruptcy Court erred in appointing a trustee under 11 U.S.C.
3 Section 1104(a)(1). See Mot. at 8-12. But this argument misses
4 the mark because the Bankruptcy Court appointed a trustee
5 pursuant to Section 1104(a)(2), not Section 1104(a)(1).² Section
6 1104(a)(2) authorizes appointment of a trustee "if such
7 appointment is in the interest of creditors, any equity security
8 holders, and other interests of the estate." See also In re Peak
9 Serum, Inc., 623 B.R. 609, 620 (Bankr. D. Colo. 2020) (explaining
10 the bankruptcy court has especially broad discretion under
11 Section 1104(a)(2) in determining whether appointment of a
12 trustee is in the best interests of creditors and the estate).
13 As Perea emphasizes, the statute's use of the word "or" at the
14 end of Section 1104(a)(1) indicates that Section 1104(a)(2) is an
15 entirely distinct basis upon which to appoint a trustee. Perea
16 Opp'n at 5. Thus, Sunergy's attempt to create the appearance of
17 an error by arguing that the Bankruptcy Court did not make
18 findings of fraud, gross mismanagement, or incompetence, and
19 therefore, there was no evidentiary basis to appoint a trustee
20 under Section 1104(a)(1), see Mot. at 11-14, fails. It fails
21 because the Bankruptcy Court did not need to make such findings
22 when appointing a trustee under Section 1104(a)(2).

23 Here proceeding under Section 1104(a)(2), the Bankruptcy
24

25 ² In its order denying a stay of the appointment of the trustee,
26 the Bankruptcy Court confirmed this: "[Sunergy] argues that this
27 court acted on a determination of incompetence under [11 U.S.C.
28 § 1104(a)(1)]. That argument transmorfifies this court's ruling
that was premised on [11 U.S.C. § 1104(a)(2)] based on the
interest of creditors, equity security holders, and other
interests of the estate." Order Denying Stay at 3.

1 Court found the appointment of a trustee would be in the best
2 interest of the Estate; and indeed, Sunergy's motion acknowledges
3 as much. Mot. at 10 (noting a reason the Bankruptcy Court
4 provided for the appointment of the trustee was the "'united
5 resistance' of the creditor body and the best interest of the
6 estate"). The Bankruptcy Court's decision was not so
7 "illogical," "implausible," or "without support in inferences
8 that may be drawn from the facts in the record" that it
9 constitutes an abuse of discretion. United States v. Hinkson,
10 585 F.3d 1247. Accordingly, the Bankruptcy Court did not abuse
11 its discretion. See In re Lowenschuss, 171 F.3d at 685.

12 Thus, Sunergy does not carry its burden on the first factor,
13 which alone "dooms the motion." In re Irwin, 338 B.R. at 843.
14 Nevertheless, the Court discusses the remaining factors briefly:
15 as to the second factor, Sunergy argues it will suffer
16 irreparable injury if a stay is not imposed. Mot. at 12-13.
17 Specifically, Sunergy characterizes the injury as follows: "if
18 the appointed trustee is permitted to proceed, all facts point to
19 the inevitable and eventual liquidation of the Debtor's assets
20 (including the Debtor's equipment and machinery) . . . If that
21 occurs, it will make the adjudication of the Debtor's Appeal moot
22 or of no consequence." Id. But as another Eastern District
23 Court explained: "it is well settled that an appeal being
24 rendered moot does not itself constitute irreparable harm." In
25 re Irwin, 338 B.R. at 853 (denying discretionary stay pending
26 appeal in bankruptcy case). Because the threat of mootness does
27 not constitute irreparable injury, Sunergy does not carry its
28 burden on the second factor.

1 As to third factor, Sunergy contends a stay will not result
2 in a substantial injury to the bankruptcy estate, equity holders
3 or creditors, and on the contrary, the Sunergy's "reorganization
4 is clearly the only realistic goal to generate sufficient funds"
5 to satisfy creditor claims. Mot. at 14. But upon careful review
6 of the record in this case, the Court agrees with the Committee
7 and Perea that a stay would harm the creditors and estate. See
8 Committee Opp'n at 8; Perea Opp'n at 9-10. This factor also
9 favors denial of a stay.

10 Finally, as to the fourth factor, Sunergy argues "this is
11 not an issue of public interest (other than to show that
12 bankruptcy cases should not be administered solely for the
13 benefit of employed bankruptcy professionals)." Mot. at 15.
14 But, as the Committee emphasizes, "t]here is great public
15 interest in the efficient administration of the bankruptcy
16 system." Committee Opp'n at 5 (quoting In re Garden Regional
17 Hospital and Medical Center Inc., 567 B.R. 820, 832 (Bankr. C.D.
18 Cal. 2017)). Here, granting a stay will frustrate the efficient
19 administration of the bankruptcy case. Accordingly, the final
20 factor militates against a stay.

21 III. ORDER

22 For the reasons set forth above, a discretionary stay
23 pending appeal is unwarranted. Accordingly, the Court DENIES
24 Sunergy's ex parte motion. IT IS SO ORDERED.

25 Dated: October 27, 2021

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27 
28 JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE